CRIMINAL MOTION.

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

GOLAP PANDEY (PETITIONER) *v.* R. H. BODDAM (OPPOSITE PARTY).* 1889 *June* 3.

Summary Trial—Magistrate, power of, to try case summarily—Criminal Procedure Code (Act X of 1882) s. 260—Criminal Trespass—Penal Code (Act XLV of 1860), s. 447.

A complainant applied to a Magistrate for process against certain persons under ss. 447, 146, 148, and 149 of the Penal Code. The Magistrate, having perused the petition of the complainant and examined him on oath, issued summonses against the persons named under those sections. The complainant was not himself an eye-witness of the occurrence, and merely stated in his petition and evidence what he had been told by his servants. Subsequently, before the accused appeared, the Magistrate examined an eye-witness, and issued a fresh summons under s. 447 only, and then proceeded to try the case summarily and convicted one of the accused. It was contended that he had no power so to try and dispose of the case.

Held, that the Magistrate had power to try the case summarily.

When a Magistrate ascertains that the facts which are alleged to have taken place disclose only an offence triable summarily, he can dispose of such case summarily, and the mere fact that a complainant enumerates sections of the Penal Code relating to offences not triable summarily does not affect the jurisdiction of the Magistrate, unless the facts of which he really complains disclose such offences.

During the pendency of a civil suit, certain persons, on behalf of the plaintiff, went on to the premises belonging to the defendant for the purpose of making a survey and for getting materials for a hostile application against the defendant. They went (some of them armed) and without the permission of the defendant, and in his absence, and when the defendant's servants objected to their action, they persisted in their trespass, and endeavoured to prevent opposition by making false statements as to the authority under which they were acting,

Held, that their actions amounted to criminal trespass.

THE facts of this case were as follows :—

Mr. R. H. Boddam, the complainant, was the lessee of a tract of land from the Raja of Palganj on the Parasnath Hill, which was a hill sacred to the Sitambari Society of the Jain community,

* Criminal Motion No. 192 of 1889, against the order passed by W. H. Thomson, Esq., Deputy Magistrate of Giridih, dated the 22nd of April 1889.

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and on and about which were situate temples belonging to that society. The complainant had originally a tea-garden on his land, but finding that it would apparently be a profitable business he set up a hog's lard manufactory on his land. This action gave offence to the society, and various proceedings were taken with a view to put a stop to the manufactory which ultimately resulted in a civil suit being filed against Mr. Boddam and his lessor, which suit was pending at the time of these proceedings. On the 23rd March 1889, Mr. Boddam laid a complaint before the Deputy Magistrate of Giridih, charging the petitioners Golap Pandey and others with offences punishable under ss. 447, 146, 148 and 149 of the Indian Penal Code, and asking that they might be bound down to keep the peace under s. 106 of the Criminal Procedure Code.

The complaint was based on a petition of Mr. Boddam in which he set out the facts leading up to the civil suit, and the annoyance he had suffered in consequence, and stated that on the 24th February, when he was away in Calcutta, a large party under the leadership of Golap Pandey, acting under the orders of the temple authorities, trespassed on to his garden, and made a survey of his lands; that two of the party were armed with swords and a number of the others with *lathies*; that they threatened his servants, and in spite of their objections, proceeded to make a survey of the land; and that their proceedings nearly resulted in a breach of the peace. Mr. Boddam's deposition was recorded by the Magistrate in support of his application, and it appeared that his knowledge of the occurrence was derived from information received from his servants, as he himself was away in Calcutta at the time.

The Magistrate, on this application, issued summonses against the persons named, under the sections named in Mr. Boddam's petition.

On the 6th April, the returnable date of the summons, none of the accused appeared owing to their inability to reach the Court on that day. The Magistrate on that day appeared to have examined one witness named Bhuttu Maji, who was an eye-witness of the occurrence complained of by Mr. Boddam, and upon his evidence issued fresh summonses to the accused under s. 447 of the Penal Code only.

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On the 13th April, the case came on before the Magistrate, who tried it summarily and convicted the accused Golap Pandey of an offence under s. 447, and sentenced him to pay a fine of Rs. 100.

The judgment of the Deputy Magistrate was as follows :—

Mr. R. H. Boddam, of Parasnath, states on oath, that he has the lease of a large tract of land from the Raja of Palganj, on an eastern spur of the Parasnath Hill, a hill which is sacred to the Sitambari Society of the Jain community. This society has temples at Madhuban, the foot of the hill, and on the top of the hill ; they have also several shrines on the several peaks. These temples and shrines are visited at various times of the year by Jain pilgrims. The leaders of the society are Rai Budrinath Das of Calcutta and Rai Dhunput Singh of Moorshedabad. Accused Golap Pandey is their agent at Madhuban, and is manager of the various temples and shrines. Mr. Boddam does not know the other two defendants. Mr. Boddam has a tea garden on the lands leased him, and in the midst of this garden he has recently established a piggery and a lard manufactory. This action on the part of Mr. Boddam seems to have given the Sitambari Society great offence, and whereas the former and the representatives of the latter used to be very friendly before, they are now, I may say, rancorous enemies. The Sitambari Society have for some time been trying to force Mr. Boddam to close up his piggery and lard manufactory. They at first worked through the Bengal Government, and then instituted a civil suit. An injunction was issued by the Deputy Commissioner of Hazaribagh, directing Mr. Boddam to stop all business at his manufactory, until the disposal of the civil suit. Mr. Boddam appealed to the High Court, and on the 12th February the injunction was set aside. Mr. Boddam at once issued orders for the resumption of operations, and he says that the Sitambari Society almost simultaneously adopted ways and means to terrorize his workmen, and induce them to desert, and thus smash up his (Mr. Boddam's) business. While Mr. Boddam was away at Calcutta, a large party, acting under the orders of the temple authorities, trespassed into Mr. Boddam's garden and made a survey ; Mr. Boddam says this took place on the 24th February, but the evidence heard by me, shows it was on Monday, the 25th February. Mr. Boddam insinuates that the survey was all sham, that the party simply came to intimidate his workmen, and they succeeded in this, some of his workmen have run away, and his munshi, Bhatta, has served a notice to quit. Mr. Boddam also states, that the leaders of the society have often told him that if he persisted in carrying on the lard manufactory, he would be jeopardizing his life. Mr. Boddam wants defendants to be punished for their trespass, and also to be bound down to keep the peace under s. 106, Criminal Procedure Code. I find that, under Mr. Boddam's lease, he is bound to give up to the Sitambari Society any portion or portions of the lands

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leased him, if it is needed by them for the purpose of erecting temples, shrines or dharmsalas; Mr. Boddam is entitled to an abatement of rent for each such relinquishment. There is a Government road from Madhuban to the top of the hill. This road runs through Mr. Boddam's garden. Mr Boddam's bungalow is a good way off the road, and a private road leads to it from the Government road. This private road continues on to the lard manufactory, which is further interior. *Bonâ fide* visitors are allowed access to the garden, but Mr. Boddam says that the public have no right to make use of his private roads and paths for any and every purpose they may choose. Recently Mr. Boddam has made a cart track, which passes by his lard manufactory; this track acts as a short cut for his workmen who come up from the foot of the hill; it is also admitted by Mr. Boddam's witnesses that jungle people take their carts along the track.

Bhattu Manji, aged 35, son of Gopal, is Mr. Boddam's munshi, and is in charge of the lard manufactory; in general matters he is second in authority to Kishen Manji, aged 25, son of Bilsi. The latter remains in charge of the garden during Mr. Boddam's absence. Hulas Singh, aged 30, son of Bhavani, is Mr. Boddam's bungalow peon. These three men have been examined as witnesses by the prosecution. Bhattu's deposition shows that, on a Monday, Golap Pandey Lukshmi Chand and a Bengali Amin all of a sudden turned up in doolies at the lard manufactory. Each dooly had four bearers; defendants Gonder and Amrit accompanied the party and also a flag bearer. The party came up by the jungle cart track, referred to above, and not by the Government road. Witness insinuates that this route was adopted, because the party wished to avoid being observed by Mr. Boddam's workmen and labourers, whom they would have met, had they come up by the regular road. Gonder and Amrit had each a sword, and there was also a sword in Lukshmi Chand's dooly. The party began a survey; witness remonstrated with them for attempting such a thing in his master's absence, and without his previous permission; he was scolded into silence, and was told that the party were acting under the orders of the Bengal Government. He withdrew further opposition, and the party after taking bearings to a peak on the top of the hill, and making a survey of the piggery and the lard manufactory, proceeded towards the bungalow, measuring the road as they went. Witness did not follow them. Witness gives some hearsay evidence regarding the threats to the workmen, referred to by Mr. Boddam, and says that two workmen, Birbal and Roopun, have run away, and he himself intends leaving. Witness says that before the survey began, an offering of a pice was made to a stone near the piggery, he does not remember having seen any offering made to the stone previous to this, nor has he heard it styled "Bhoirubsthan." On reaching Mr. Boddam's bungalow, the party were confronted by Hulas Singh, and a scene similar to what occurred between them and Bhattu again took place. Witness snatched the flag and refused to give it up. Matters stood thus, when Kishen Munshi

appeared on the scene, he bid the peon stand aside, and entered into a conversation with the party himself. This witness, Hulas, says that the stone to which offerings are made, is not on Mr. Boddam's land. Kishen Manji says the party boasted of having received orders from the Bengal Government to make the survey; witness asked for the order; it was not produced, but he was told that Rais Dhunput Sigh and Budri Dass were great friends of Government, and had ordered the survey. While this conversation was going on, the party finished their work and left. Witness at first said that, when he appeared on the scene, Hulas was having a peaceful conversation with the trespassers, but he corrected himself immediately after, and said that angry words were passing between them.

Such is the case for the prosecution, a very much tamer affair than I had supposed it to be. Golap Pandey says that private business took him to the vicinity of the piggery; an amin was going up to survey the piggery and the "Bhoirubsthan" in it, and he accompanied him to show him the latter place. The other two defendants simply acted as attendants. Golap Pandey seems to think his action quite legal; he says he has always had free access to Mr. Boddam's house lands and premises, and that he was not legally bound to take previous permission for the purpose of an entry to make a survey. The presence of the sword is ascribed to the practice of jungle travellers always having such weapons with them for the purpose of defence against wild beasts. Prosecution witness, Bhuttu, distinctly says that the object of the trespassers was to make a survey. The evidence of Ishri Pershad, aged 28, son of Tejnarain, shows that the Deputy Commissioner's injunction was set aside, because in the plaint which accompanies the application made by the Jains for the injunction the boundaries of the tract in lease to Mr. Boddam were not given, nor were the interior details of his garden and piggery fully and properly described. The High Court transferred the civil suit to the Subordinate Judge of the 24-Pergunnahs, and the legal advisers of the Jains advised the making of another attempt for an injunction after obtaining all the necessary materials. They directed Lukshmi Chand to have the tea garden surveyed and to prepare a map, showing its boundaries and the position of the piggery, lard manufactory, and Mr. Boddam's bungalow in it. Witness cannot say whether the leaders of the community were consulted in this matter, or whether their permission was obtained to the making of a survey; so far as witness' knowledge goes, Lukshmi Chand was given full powers to exercise his discretion in this matter by the legal advisers, and he appointed an amin, whose name witness does not know, and had the survey made. Witness files the map prepared by the amin which is marked Exhibit I. On all the facts before the Court, there is hardly a doubt that the real object of the trespass was to make a map of Mr. Boddam's lands and premises for the purpose of the civil suit, but they ought to have known that doing this in the illegal way they did would cause Mr. Boddam annoyance.

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Poran Chand, aged 28, is one of the managers at Madhuban. He swears to the existence of the most friendly relations between his community and Mr. Boddam, prior to these complications; when the lard business was first started, witness, under orders from his principals, visited the place without obtaining previous permission, and was shown over the works by the *chota sahib*, and afterwards by Mr. Boddam himself. Witness says that Mr. Boddam's garden paths are used as a short cut by him and pilgrims; that he has never been stopped while passing through the garden. He says there is a "Bhoirubsthan" near the piggery, which pilgrims visit while descending from the shrines on the top of the hill; witness says he has seen offerings being made to this idol, which, he says, is in Mr. Boddam's compound. To a question put by the Court, witness said that pilgrims have a right to visit the "Bhoirubsthan," but Mr. Boddam may send them away, if he finds them straying about in other portions of his lands without his permission. Witness was asked whether the Jain community had a right to enter on Mr. Boddam's lands, and do any act they pleased; after a deal of hesitation he gave a reply in the affirmative, and said they could build temples and shrines on any portion of Mr. Boddam's lands, without taking his previous permission. Witness says he was away at Moorshedabad when the amin visited the place, and he cannot say under whose orders the survey took place.

Admitting all that defendants urge, which are: (1) that the Jain community have a right to make Mr. Boddam deliver to them lands they may need for sacred purposes; (2) that they use the garden paths as a short cut; (3) that they have a right to visit a "Bhoirubsthan" near the piggery; (4) that they are admitted into Mr Boddam's lands as sight-seers; (5) that previous to these complications the temple people were allowed to go in and out of Mr. Boddam's lands without any let or hindrance, nevertheless, it is very clear that they have not the right to go on Mr. Boddam's lands, and do any or every act they please. Defence witness, Poorno Chunder, distinctly says that Mr. Boddam would be perfectly justified in sending out of his premises any member of the community he may find straying about portions of his lands other than that occupied by the "Bhoirubsthan."

Defendants' vakil urges that all the facts set forth by the prosecution do not constitute criminal trespass, for proof of motive to annoy on the part of his clients is absent. He urges that a survey for the purpose of a civil suit pending was absolutely necessary, and an entry for the purpose of such a survey does not amount to criminal trespass. A distinct provision is made in the Civil Procedure Code for such a case; if the vakil's interpretation of the law were correct, the Code would have said that the person wishing to make the survey was at liberty to enter his adversary's lands and make the survey, without being liable to be treated as a trespasser; on the contrary, the Code lays down that the survey in such a case is to be done through the Court. Defendants admit having acted all along under legal advice,

and they ought to have known what the correct procedure is; they departed from the correct procedure wilfully, and it is absurd for them to argue, that they had no idea that their conduct would cause Mr. Boddam annoyance. Their action did cause annoyance; they must have known very well that they would cause annoyance, and the Court holds that all the elements necessary to make a trespass—criminal trespass—existed. The Court is distinctly of opinion that defendant Golap Pandey ought to have taken Mr. Boddam's permission before he made the survey, and that his having done so without permission, amounts to an entry for the purpose of causing annoyance. The Court finds Golap Pandey guilty of criminal trespass to cause annoyance, and, under s. 447 of the Penal Code, sentences him to a fine of Rs. 100. As regards the other two defendants, the evidence shows they followed Golap Pandey simply as attendants, and on the facts before the Court, it would not be fair to hold that they were participators in the offence committed by Golap Pandey, the Court therefore acquits them under s. 245, Criminal Procedure Code.

The Court does not consider action under s. 106 Criminal Procedure Code needed.

Golap Pandey thereupon applied to the High Court under its revisional power for a rule, calling on the Deputy Magistrate and the opposite party to show cause why the conviction and sentence should not be set aside, upon, amongst others, the following grounds:—

(1). That the Deputy Magistrate had no jurisdiction to try the case under s. 260 Criminal Procedure Code, and the said trial was illegal and improper, and as such ought to be set aside.

(2). That the proceedings and the judgment of the Deputy Magistrate did not comply with the provisions of s. 264 Criminal Procedure Code, and therefore the conviction and sentence based thereon ought to be set aside.

(3). That the lands in dispute being the subject-matter of the civil suit in which the complainant had been sued as a trespasser on the said lands, the petitioner, the servant of the plaintiffs therein, was not guilty of an offence under s. 447 Penal Code, for a *bonâ fide* entry therein for the purpose of a survey, under legal advice, for the purpose of the said suit without any intention of either committing any offence or intimidating or insulting or annoying the complainant.

(4). That there being no evidence or finding that the complainant was the owner of the lands (and, as a matter of fact, a

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bonâ fide civil suit being pending in the Civil Court with respect to the title thereto) the conviction under s. 447 was illegal.

(5). That, admittedly the Jain Sitambari Society having a right to go over the Hills for the purpose of worshipping or selecting a site for any new temple thereon, the entry, as alleged and found against your petitioner, did not constitute any offence under s. 447 Penal Code.

(6). That as there was no evidence that the petitioner entered the land with the intention of committing any offence or intimidating or insulting or annoying the complainant or his men, the learned Deputy Magistrate was wrong in convicting the petitioner under s. 447 Penal Code.

(7). That the findings of the Deputy Magistrate do not support a conviction under s. 447 Penal Code.

Upon this application, a rule was issued, which now came on to be heard.

Mr. *Woodroffe* and Baboo *Dwarka Nath Chuckerbutty* for the petitioner.

Mr. *Hill* and Baboo *Dwarka Nath Mookerjee* for the opposite party.

The arguments advanced at the hearing of the rule are sufficiently stated in the judgment of the High Court (TREVELYAN and BEVERLEY, JJ.), which was as follows:—

The first question which we must decide in this case is whether we ought to hold that the Magistrate had no power to try this case summarily, and that his proceedings are illegal.

Learned counsel for the accused cited to us cases to show that the offence was, for the purposes of s. 260 of the Criminal Procedure Code, determined by the complaint, and that if a complaint be made of an offence not triable summarily, the Magistrate cannot under any circumstances investigate the complaint summarily.

Although there are expressions used in some of the cases sufficient to justify this argument, we do not think that the cases are so unanimous as to force us to the same conclusion.

We say this as it appears to us that there may frequently be cases in which the charge has been exaggerated, and is, on exami-

nation by the Magistrate before process is issued, reduced to its proper proportions. This is notoriously the case in respect of many charges, which, according to the complaint, would be triable exclusively by a Court of Session, but which when shorn of their exaggeration the Magistrate very properly finds to be comparatively slight offences within his own cognizance.

If the complainant does not complain of this course, it is difficult to see why the Magistrate should adopt the procedure applicable only to the exaggerated charge.

In the case of *The Empress* v. *Abdool Karim* (1), Mr. Justice Ainslie, with the concurrence of Mr. Justice Broughton, says: "If a charge of an offence not triable summarily is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggerations and not to be believed." In another case, *The Queen* v. *Aboo Sheikh* (2), where a man was charged with rioting, and the Magistrate tried the case summarily as one of mischief and unlawful assembly, Phear and Ainslie JJ, declined to interfere at the instance of the accused person.

In the matter of Mewa (3), it was held that a Magistrate has a discretion to enquire into and try a person on any charge which he may consider covered by the facts reported without reference to the particular charge which may have been pressed, and without reference to the procedure, which, when he has determined the offence with which he will charge the accused, it will be competent for him to adopt. In the two latter of these cases the Judges do not seem to have heard any argument, but the same observation can be made with regard to the cases of *The Queen* v. *Johrie Singh* (4) and *Ram Chunder Chatterjee* v. *Kanye Laha* (5) cited to us by Mr. Woodroffe for the petitioner.

In the present case the complaint was made by Mr. Boddam, who did not pretend to be an eye-witness of what had occurred. The Magistrate, before issuing process against the accused, exa-

(1) I. L. R., 4 Calc., 18 cf. p. 20.
(2) 23 W. R., Cr., 19.
(3) 6 N.W., 254.
(4) 22 W. R., Cr., 28.
(5) 25 W. R., Cr., 19.

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mined an eye-witness, one of Mr. Boddam's servants, and his statement showed what the real complaint was. We think that this case comes within the class of cases contemplated by Mr. Justice Ainslie, and that when the Magistrate ascertains that the facts which are alleged to have taken place disclose only an offence triable summarily, he can dispose of such case summarily. The mere fact that the complainant enumerates sections of the Penal Code relating to offences not triable summarily, does not, we think, affect the jurisdiction of the Magistrate unless the facts of which he really complains disclose such offences.

We think that this case was triable summarily. It has also been urged before us, that no offence has been committed, the object of the intruders only being to survey the premises.

No doubt that was their primary object, but when we find them going on to the premises in Mr. Boddam's absence and without his leave, and taking three swords with them, we think it clear that they intended to intimidate Mr. Boddam's servants into not opposing their entering upon the premises, which, from their relation with Mr. Boddam, they must have known he would have objected to their entering. It is true that they seem to have to some extent attempted to avoid discovery, but when accosted by Mr. Boddam's servants they persisted in their trespass, and endeavoured to prevent opposition by the false statement that they had been sent by the orders of the Bengal Government.

The trespass was most unwarrantable, and if it were to be tolerated that while two persons are litigating as to a property, one may go armed on to the property of which the other is in possession for the purpose of getting materials for an hostile application, breaches of the peace would be frequent.

We think, therefore, that the conviction must stand, and we do not think that the fine was under the circumstances excessive.

The rule is, therefore, discharged.

H. T. H. *Rule discharged.*

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

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and

IN THE MATTER OF THE PETITION OF KALI ROY AND OTHERS *v.* THE QUEEN-EMPRESS.

Sentence—Cumulative Sentences—Rioting—Distinct offences—Conviction for rioting and causing hurt and grievous hurt—Separate Conviction for more than one offence when acts combined form one offence—Abetment of grievous hurt during riot—Penal Code (Act XLV of 1860), *ss.* 147, 323, 325).

Six accused persons were charged with and convicted of rioting, the common object of which was causing hurt to two particular men. Four of the accused were also charged with and convicted of, respectively, causing hurt during the riot to the two men and a woman, and were sentenced to separate terms of imprisonment under ss. 147 and 323 of the Penal Code.

Held, that the sentences were legal.

During the course of a riot, in which *X* was attacked and beaten by several of the rioters, one of them *K* inflicted grievous hurt on *X* by breaking his rib with a blow struck with a *lathi*; *K* and three others of the rioters were charged with offences under ss. 147 and 325 of the Penal Code and *K* was convicted under those sections. The other three were convicted under s. 147 and also under s. 325 read with s. 109. Separate sentences were passed on *K* and also on the other three for each of the offences.

Held, that the sentences on *K* were legal, but that as there was nothing to show that the other three had abetted the particular blow which caused the grievous hurt, although they had each of them assaulted *X*, the conviction of them under s. 325 read with s. 109 could not be supported.

THE accused in the two cases which gave rise to these two rules were peons employed by a large zemindar named Mohunt Gopal Das, and the complainants in both cases were ryots of his, residing in a village called Damra. It was alleged that for a considerable time the zemindar had been trying, though unsuccessfully, to enhance the rents of his ryots, and this had led to numerous cases between him and the ryots. It was alleged that having failed to attain his object in the Civil Courts, he endea-

° Criminal Motions Nos. 202 and 203 of 1889, against the orders passed by J. Whitmore, Esq., Sessions Judge of Birbhoom, dated the 21st April 1889, modifying the orders passed by W. B. Brown, Esq., Sub-Divisional Magistrate of Rampore Haut, dated the 1st of April 1889.

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voured to break down the resistance by a system of petty persecutions, and that he kept a number of peons, amongst them the accused, for the purpose of watching the jungle and waste-lands of his villages, impounding the cattle of the ryots, and charging the ryots with theft when grass or bambcos were taken from the jungle. The occurrences which formed the subject-matter of these two cases were alleged to have taken place in carrying out the object of the Mohunt, and they took place on the same day. Some of the accused were charged in both cases.

In Rule No. 202, the following persons were charged: (1) Mohur Mir, (2) Kali Rai, (3) Tenu Sheikh, (4) Umed Sheikh, (5) Murad Sheikh, and (6) Makhan Singh or Rai.

In that case, it was alleged that the accused had been deputed to bring two ryots, named Prankristo and Lal Behary, to the zemindary cutcherry. The story told by the witnesses for the prosecution was shortly to the effect, that Prankristo, Lal Behary, and a woman named Khiroda were returning home from Futtehpore Hat to Damra in a cart, along with some others, when they were stopped by the accused and other peons of the zemindar, and after a conversation they were assaulted and beaten in a savage manner. Both Prankristo and Lal Behary were stripped of their clothes and beaten with *lathies*, and Rs. 21, which were tied up in Prankristo's *dhoti*, were taken away. On Khiroda calling for help, some of the peons attacked her and pulled off her ornaments, which they took away. After the assault the three persons named were left lying wounded on the spot of the occurrence. The defence consisted of *alibis* and was also based on the fact that no persons were named in the first information.

The Sub-Divisional Magistrate convicted all the accused of rioting, coming to the conclusion that the common object was the causing of hurt to Prankristo and Lal Behary. He further found that there was nothing to show that robbery was contemplated by the assembly, or that there was any idea of assaulting Khiroda till she raised an alarm. He convicted and sentenced the various accused as follows:—

Mohur Mir under s. 147, two years' rigorous imprisonment and a fine of Rs. 200, or six months. Under s. 323 for causing hurt to Prankristo, six months' rigorous imprisonment.

Kali Rai under s. 147, one year's rigorous imprisonment and a fine of Rs. 200, or six months. Under s. 323 for causing hurt to Prankristo, one year's rigorous imprisonment.

Tenu Sheikh under s. 147, one year's rigorous imprisonment and a fine of Rs. 200, or six months. Under s. 323 for causing hurt to Prankristo, six months, and under s. 392 to an additional six months.

Umed Sheikh and Murad Sheikh under s. 147, to one year's rigorous imprisonment and a fine of Rs. 200, or six months.

Makhan Singh or Rai under s. 147, to one year's rigorous imprisonment and a fine of Rs. 200, or six months. Under s. 323, for causing hurt to Khiroda, six months, and under s. 392, to an additional six months.

All the accused were further ordered to be bound over to keep the peace for three years.

The accused all appealed to the Sessions Judge who set aside the conviction of, and sentences passed against, Kali Rai, Tenu Sheikh, and Makhan Singh, under s. 392, but upheld all the other convictions and the sentences passed thereon, with the exception of reducing the fines inflicted on all the prisoners save Kali Rai from Rs. 200 to Rs. 30, and in the case of Kali Rai, and three others, he reduced the fine from Rs. 200 to Rs. 50.

In Rule No. 203, the persons charged were—

(1) Makhan Singh, (2) Tenu Sheikh, (3) Murad Sheikh, and (4) Kali Rai.

In that case the prosecution alleged that one Kuree Ram was going alone from upper to lower Damra, when some 12 or 14 peons came up to him and asked him to go to the cutcherry. On his refusal to go, on the ground that it was too late, he was immediately attacked. He was mauled and knocked down by Mohur Mir and beaten with *lathies* by Tenu Sheikh and Kali Rai, the latter of whom hit him a blow on the side which fractured one of his ribs. Then all the peons fell on him and gave him a miscellaneous beating, and stripped him of his clothes and left him. The defence in this case was practically the same as in the other. The Sub-Divisional Magistrate convicted all the accused under s. 147 and sentenced them each respectively to six months' rigorous imprisonment and a fine of Rs. 200, or six

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months. He convicted Kali Rai of causing grievous hurt under s. 325 and sentenced him to one year's rigorous imprisonment and he convicted the other three under ss. 325 and 109 of abetting the causing of greivous hurt by Kali Rai, and sentenced them to three months' rigorous imprisonment; and he further ordered all the accused to be bound over to keep the peace for three years.

On appeal, the above convictions and sentences were upheld by the Sessions Judge, except that the fines in all cases were reduced from Rs. 200 to Rs. 30.

In both cases, an application was made to the High Court under its revisional powers to send for the records and set aside the convictions and sentences upon numerous grounds, and amongst them upon the ground that separate punishments for component parts of the same offence ought not to have been inflicted, and that the sentences were illegal.

Two rules were issued which now came on to be arued.

Mr. *Woodroffe* and Baboo *Rajendro Nath Bose* for the petitioners in both cases.

Mr. *Kilby* for the Crown.

The only question argued at the hearing of the rules material for the purpose of this report, was that relating to the legality of the sentences.

The judgment of the High Court (TREVELYAN and BEVERLEY, JJ.) was as follows :—

We have heard these two rules together.

In the first of them (Rule 202), six prisoners have been convicted and sentenced by the Magistrate. On appeal to the Sessions Judge, the sentences were in some respects modified. As they stand at present, four of the accused have been convicted of, and sentenced for, offences falling under ss. 147 and 323 Indian Penal Code, and the only question which we have to consider is whether these sentences were legal.

Mr. Woodroffe contended that separate sentences under those sections could not be imposed, relying upon a decision of a Full Bench of this Court, given in the appeal of *Nilmoni Poddar* v. *Queen-Empress* (1). That decision has, we think, no

(1) I. L. R., 16 Calc., 442.

application to the facts of the present case. The decision in question dealt with the liability of one rioter for offences actually committed by another rioter. It in no way affects the question of the liability of a rioter for the acts committed by himself. The Judges who referred that case to the Full Bench did not refer the appeals of the persons who actually committed acts of grievous hurt, but dismissed the appeals of those persons. In the Full Bench Case, Tottenham, J., says : " The actual perpetrator is unquestionably punishable both for rioting and for any further offence he commits," and for this proposition of law there is ample authority—see *Queen-Empress* v. *Ram Sarup* (1).

In the present case the accused have been separately convicted and punished for acts committed by themselves in the course of the riot. Kali Roy is convicted of having voluntarily caused hurt to Prankristo by hitting him with a *lathi*. Makhan Roy is convicted of having caused hurt to Khiroda by hitting her with a *lathi*. Tenu Sheikh, of having caused hurt to Prankristo, by hitting him with a stick, and Mohur Mir, of having caused hurt to Prankristo, by hitting him with a shoe.

We are of opinion, therefore, that the sentences passed upon those persons are legal.

Mr. Woodroffe further drew our attention to a passage in the judgment in *Lokenath Sarkar* v. *Queen-Empress* (2) which runs as follows : " If it had been found that the causing of hurt was the force or violence which alone constituted the rioting in the present case, then we should be prepared to hold that the prisoners could not be punished both for causing hurt and for rioting ; but the facts of the case do not warrant such a finding, for rioting was being committed before the hurts were inflicted, and the two men wounded." Without assenting to the proposition of law, as thus laid down, we would remark that in this case also the evidence shows that the offence of rioting was committed before Prankristo and his companions were actually struck. The accused, who appear to be zemindary peons, were deputed to bring Prankristo and Lal Behary to the zemindary

(1) I. L. R., 7 All., 757. (2) I. L. R., 11 Calc., 349.

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cutcherry; and they appear to have used considerable violence to them in attempting to do so before they struck them.

In the second case (Rule 203), Kali Rai has been convicted and sentenced both for rioting under s. 147 and under s. 325 for voluntarily causing grievous hurt to Kuree Ram by breaking one of his ribs; and the other three accused have been convicted and sentenced under ss. 147 and 325 read with s. 109, that is to say, for abetting the causing of grievous hurt to Kuree Ram by Kali Rai. We do not think that the conviction under this latter section was right, inasmuch as although the evidence shows that they themselves beat Kuree Ram, there is nothing to show that they abetted Kali Roy in inflicting the particular blow which broke his rib. We think, therefore, that these three accused should have been acquitted on that head of the charge, and we accordingly set aside that portion of the conviction and the sentence of three months' rigorous imprisonment imposed in respect of it.

In other respects we discharge the two Rules.

Rule 202 discharged.

H. T. H. *Rule 203 made absolute in part.*

Before Mr. Justice Trevelyan and Mr. Justice Beverley.

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Criminal Procedure Code (Act X of 1882), ss. 195, 439, 476—Sanction for prosecution—Order for prosecution—Jurisdiction of High Court in revision to quash orders under s. 476 of the Criminal Procedure Code.

The High Court is competent in the exercise of its revisional powers to interfere with an order of a Subordinate Court, whether made under s. 195 or under s. 476 of the Criminal Procedure Code, directing the prosecution of any person for offences referred to in those sections. The High Court, under s. 439, has the powers conferred on a Court of appeal by s. 423 to alter or reverse any such order.

Before a Court is justified in making an order under s. 476, directing the prosecution of any person, it ought to have before it direct evidence,

* Criminal Motions Nos. 241, 242, and 243 of 1889, against the orders passed by Baboo Mohim Chunder Ghose, Deputy Magistrate of Nattore, dated the 7th of May 1889.

fixing the offence upon the person whom it is sought to charge, either in the course of the preliminary enquiry referred to in that section, or in the earlier proceedings out of which the enquiry arises. It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that the person had been guilty of an offence; but there must be distinct evidence of the commission of an offence by the person who is to be prosecuted.

When a Subordinate Magistrate, after trying a case, sent the record to the District Magistrate with a suggestion that certain persons ought to be prosecuted under s. 211 of the Penal Code, the High Court held that this did not constitute a sanction to prosecute.

Queen v. *Baijoo Lal* (1), and *In the matter of the petition of Kali Prosunno Bagchee* (2) followed.

ON the 19th of December 1888 one Khepu Nath Sikdar, a hotel-keeper at Nattore, lodged an information at the police-station that he had missed from his box in his hotel certain gold and silver articles, and that he suspected one Grish Chunder Mukerji and the other lodgers of having committed theft in respect thereof. The local police investigated the case and sent up Grish Chunder Mukerji, in whose house it was alleged one of the stolen articles was found. In the course of the trial before the Deputy Magistrate of Nattore, Grish Chunder Mukerji set up the defence that the charge was a false one, preferred at the instigation of the Mohunt of Tarkeshar in the District of Hughli, because he, Grish Chunder Mukerji, had refused to permit his wife to go to the Mohunt who wanted her for an immoral purpose. Before the case for the prosecution against Grish Chunder was closed, the Deputy Magistrate examined witnesses tendered by the accused, and rejected the prayer of the complainant Khepu Nath Sikdar for summoning all his witnesses. Thereupon Khepu Nath Sikdar moved the District Magistrate of Rajshahi (Mr. H. A. D. Phillips) to transfer the case to the file of some other Magistrate, but the District Magistrate refused the application, and in his order of refusal, dated the 23rd April 1889, made the following remarks:—

"The issues are no doubt of grave importance, but I see no reason for transferring the case from the file of the Sub-Divisional Magistrate, and I accordingly reject the application. At the same time I feel sure the Sub-Divisional Magistrate will

(1) I. L. R., 1 Calc., 450. (2) 23 W. R., Cr., 39.

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recognise the extreme gravity of the case and do his best to sift the matter to the bottom and get at the truth. If the case is false it is one which should certainly be followed by the prosecution of Khepu for false charge, and of the Mohunt also for abetment of the same were there any chance of proving such an abetment. On the other hand, if the theft be true and the allegation about the Mohunt be false, then Grish deserves to be punished for wanton defamation."

The case was then again taken up by the Deputy Magistrate, who, after examining some more witnesses on the 7th May 1889, acquitted the accused; his judgment being in the following terms:—

"On the 20th December last, Khepu Sikdar, a hotel-keeper of Nattore Upper Bazar, instituted a case of theft in a building, at the Nattore Police-station, and stated that the stolen property consisted of a new pair of golden *balas* and four pieces of silver anklets. He charged Abinash Chunder Bayragy and Kalachand Acharji, of Tarkeshar, and the present accused, Grish Chunder Mukerji, of Bhanjipore, near Tarkeshar, in the district of Hughli, with the theft, alleging that they had been lodgers in his hotel from the day before that on which the theft occurred. Head constable Dino Bandhu Ghose, of Nattore Station, took up the investigation. He went to Tarkeshar with Khepu Sikdar. On searching the house of Grish Chunder Mukerji, he obtained a piece of *bala* under a window, which Khepu Sikdar identified as one of the pair that had been stolen. The Head Constable, however, reported the case to be entirely false for reasons set forth in the "B" Form, in which the case was reported. After the receipt of the Head Constable's report I communicated the matter to the District Magistrate, and, at the same time, having regard to the important issue involved in the case, suggested to him the desirability of having an enquiry made through the Magistrate of Hughli by some trustworthy police officer under him. The Sub-Inspector of Haripal made the investigation, and reported Khepu's case to be true. It would have been a good thing, if some officer other than the Sub-Inspector of Haripal had made the investigation, for Tarkeshar is within

Haripal, and the Sub-Inspector of that place did not, in my opinion, act quite independently in this matter. After receipt of his report the District Magistrate ordered the original case to be tried. No reliable witness has been produced by Khepu Sikdar; but, on the contrary, the evidence of certain witnesses examined by me and a consideration of the entire circumstances leave no room for doubt in my mind that Khepu's case is entirely a got-up one, the result of a deep-laid conspiracy to ruin Grish and others.

"Grish has a handsome-looking young wife, and the Mohunt of Tarkeshar was anxious to get hold of her. Here is something like history repeating itself in connection with the Mohunt, for who has not heard of the incidents connected with the Mohunt, Elokeshi, and Nobin? In order to keep her out of the Mohunt's way Grish had to remove his wife to her paternal residence at Sonamukhi, in the district of Bankura. I have examined the wife of Grish, Kristokamini by name. She is a tender girl of about 16, and is now *enciente*. In spite of her delicate condition, Grish produced her before me, fetching her from Sonamukhi, as it had been alleged by Baboo Mohim Chandra Moitra, Mukhtear, under instruction from Khepu Sikdar, for whom he appeared, that the wife of Grish was a girl of only 7 or 8 years of age. Baboo Mohim Chandra Moitra, when he came to know that Khepu had given him false information as regards the age of Kristokamini, declined to act on his behalf. The deposition of Kristokamini shows how the vile woman 'Chotaginni' acted as a pimp to win her over to the Mohunt. There is some writing of Grish in a *khata* produced by Khepu Sikdar (*vide* Exhibit A). Grish has explained how he was made to write in the *khata* by Khepu Sikdar. It was done after Grish was released on bail from the *hajut*. It should be mentioned that I put Grish into *hajut* when the police first produced him before me. Grish stated from the very beginning that he had never been to Nattore before the institution of this case. I find no possible reason why Grish should come to Nattore. Can it be supposed that he came merely to commit the theft and then fly off? If so, what made him give his true address, as he was a stranger to this place? Is it possible that, after giving his address, he

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would be so careless as to take the ornament home, and not dispose of it somewhere on the way? The ornament was found under a window under very suspicious circumstances, and where anybody might have thrown it. Khepu has no wife; he lives here with a mistress, and is altogether a notorious character. It is said that he made the ornaments for his brother's wife; what could he say, having none of his own? I consider the allegation to be entirely false, for he does not seem to be such a rich man as to invest money for ornaments for his brother's wife. Again, is it possible that he kept the ornaments in a broken box in the midst and in the presence of strangers? The evidence leaves no doubt in my mind that Khepu acted as a mere tool in the hands of Mohendra Mukerji, employed under the Chotataraf Rajbati. It is in evidence that he had deposited a considerable sum of money with the Rajbari treasurer, and that it was under his order that Rati Kanta Karmakar prepared the ornaments. Mohendra, it should be mentioned, is a relative of the present Sub-Inspector of Nattore, and has a relative in the person of Panchcowrie Mukerji, of Dhaniakhali, employed under the Mohunt. It is in evidence that Panchcowrie happened to be in Nattore about the time when Khepu's case was instituted. He is a resident of Dhaniakhali, in the district of Hughli, and the report of the Sub-Inspector of Haripal was sent from that place. Witness Prasannanath Bhaduri, who has given evidence as to how the plot was hatched by Mohendra, has produced a letter marked A, with its envelope, with the post-mark of Haripal on it. The letter purports to have been written by Panchcowrie to Mohendra in connection with the case. If Khepu's case was true, what business had Mohendra and Panchcowrie to mingle in it, and what business had they to get up a false case unless it was to further the interests of the Mohunt, who had cause to be annoyed with Grish, not only for his failure to get hold of his wife, but also for his giving evidence against him in a certain case. I need not enter into further details. The plot, to say the least, is the most mischievous and nefarious that I have ever come across; its sole object was to wreak vengeance on a supposed enemy, if not also to put Grish out of the way, and so facilitate the

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Mohunt's intrigue with his wife. I consider Grish to be an innocent man, as far as Khepu's case is concerned. As some evidence for the defence has been taken, the prisoner ought to be acquitted. He has therefore been formally charged to-day, and he has pleaded not guilty. I acquit Grish Chunder Mukerji under s. 258 Criminal Procedure Code and direct that he be set at liberty. The records of the case will be submitted to the District Magistrate for prosecution of Khepu Sikdar under s. 211 Indian Penal Code, and of Mohendra Mukerji and Panchcowrie Mukerji for abetting the same. All these persons may be tried under any other section of the Penal Code that may be found applicable. A list of witnesses for the prosecution will be attached to the record."

After the above order was passed, the case was taken up by Mr. Ainslie, Deputy Magistrate of Rampore Baulia, who described himself in his order as "Deputy Magistrate in charge," and he issued warrants for the arrest of the three persons referred to in the above order. Those three persons accordingly moved the High Court to quash the sanction or direction given by the Deputy Magistrate of Nattore for their prosecution under s. 211 of the Penal Code. On those applications three rules were issued, calling upon the Deputy Magistrate to show cause why his order should not be set aside; and similar rules were issued upon Grish Chunder Mukerji, because it appeared from the affidavit of one of the petitioners that the Deputy Magistrate had asked the pleaders of Grish Chunder Mukerji whether he would like to prosecute the complainant in the event of a prosecution under s. 211 being sanctioned, and that thereupon the pleader had replied in the affirmative. These three rules now came on for disposal.

In Rule No. 241—Mr. *Woodroffe*, Baboo *Umbica Churn Bose* and Baboo *Gopi Nath Mookerjee* for the petitioner, Khepu Sikdar.

In Rule No. 242—Mr. *M. Ghose*, Baboo *Jogendro Nath Bose* and Baboo *Kamini Kumar Gohu* for the petitioner, Panchcowrie Mukerji.

In Rule No. 243—The *Advocate-General* (Sir *G. C. Paul*) and Baboo *Gopi Nath Mukerjee* for the petitioner, Mohendra Mukerji.

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Baboo *Ram Charan Mitter* for the Deputy Magistrate in all three rules.

Mr. *Hill* and Baboo *Iswar Chunder Chuckerbutty* for Grish Chunder Mukerji, the opposite party, in all three rules.

Baboo *Ram Charan Mitter*, in showing cause, contended that the Deputy Magistrate of Nattore had given no sanction to any individual under s. 195 of the Criminal Procedure Code, and that therefore the High Court had no power to quash the order under the provisions of that section. If an order under that section had been passed, the petitioners ought to have gone to the Sessions Judge in the first instance. Moreover, the High Court had no power to quash an order for prosecution, which did not amount to a sanction. *Queen Empress* v. *Rachappa* (1).

On the merits he contended that, though the Deputy Magistrate was not justified in referring in his judgment to the previous history of the Mohunt of Tarkeshar, which was not in evidence before him, the evidence recorded by the Deputy Magistrate was sufficient to justify him in directing a prosecution under s. 476 of the Criminal Procedure Code.

Mr. *Hill* claimed the right to address the Court on behalf of Grish Chunder Mukerji, who had been called upon to show cause.

TREVELYAN, J., enquired if Mr. Hill intended to argue that no sanction had been given by the Deputy Magistrate under s. 195 Criminal Procedure Code.

Mr. *Hill* informed the Court that it would be his contention that no sanction had been accorded by the Deputy Magistrate to any private individual.

TREVELYAN, J.—In that case, Mr. Hill, you have no *locus standi* on your own showing, and we rule that you are not entitled to be heard.

Mr. *Woodroffe*, on behalf of Khepu Sikdar in Rule No. 241.—Whether the order of the Deputy Magistrate is to be regarded as a sanction under s. 195, Criminal Procedure Code, or as a direction by the Court under s. 476, the High Court is equally

(1) I. L. R., 13 Bom., 109.

competent to deal with it. If the order is to be regarded as a sanction, it can be revoked by the High Court under the provisions of s. 195, Criminal Procedure Code; and if the order be one made under s. 476, the revisional powers of the High Court are large enough to enable it to set it aside. Any order in a judicial proceeding is liable to be altered or reversed by the High Court in its revisional jurisdiction—Section 439. Similar orders have been quashed in the case of *Queen* v. *Baijoo Lal* (1), following the earlier case of *In the matter of the petition of Kali Prosunno Bagchee* (2). On the merits, the case has been so irregularly and improperly tried by the Deputy Magistrate, that no weight ought to be attached to his conclusions. There is nothing to show that a theft had not really occurred, and that the charge of Khepu Nath Sikdar was false.

Mr. *M. Ghose*, who appeared on behalf of Panchcowrie Mukerji in Rule No. 242, was stopped by the Court on the ground that there was no evidence against his client.

The *Advocate-General*, who appeared on behalf of Mohendra Mukerji in Rule No. 243, contended that his client never having been examined in the case by either side, the Deputy Magistrate had no right to direct his prosecution; and that the evidence against him was wholly inadmissible and incredible on the face of it.

The following judgment of the High Court (TREVELYAN and BEVERLEY, JJ.) was delivered by

TREVELYAN, J.—This is an application to set aside an order of the Deputy Magistrate of Nattore, dated 7th May 1889, by which he directs that the records of a case, brought by Khepu Nath Sikdar against Grish Chunder Mukerji, be submitted to the District Magistrate for the prosecution of Khepu Sikdar under s. 211 of the Indian Penal Code, and of Mohendra Mukerji and Panchcowrie Mukerji for abetting this offence. He then goes on to say:—"All these persons may be tried under any other section of the Penal Code that may be found applicable. A list of witnesses for the prosecution will be attached to the record." That order being made, and the record being sent, whether to the Magistrate or where does not appear, an

(1) I. L. R., 1 Calc., 450. (2) 23 W. R., Cr., 39.

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order was made by Mr. E. F. Ainslie, who describes himself as "Deputy Magistrate in charge," directing issue of warrants against these three persons for their arrest, and fixing a day for the hearing; and directing, furthermore, that the case should remain on his file.

This case has been argued at some length. The *first* question is as to what this order of the 7th May means; the *second* is whether we have jurisdiction under the revision powers conferred upon us to set aside this order; and the *third* question is whether, under the circumstances of this case, we ought to exercise such powers in favour of the persons who have applied to us.

One view of this order of the 7th May is that it amounts to a sanction to prosecute. Another view of this order is that it is an order made by the Deputy Magistrate under the provisions of s. 476 of the Criminal Procedure Code, sending the case for inquiry or trial to the Magistrate of the District. There is a third view of this order: it is one that is sought to be supported by an order of the Magistrate of the District, dated 23rd April, on an application made to transfer the case from Nattore. In that order, after some observations having no reference to the matter of the application made before him, the Magistrate said this:—"At the same time, I feel sure the Sub-Divisional Magistrate will recognize the extreme gravity of the case, and do his best to sift the matter to the bottom, and get to the truth. If the case is false, it is one which should certainly be followed by the prosecution of Khepu for a false charge, and of the Mohunt also for abetment of the same, were there any chance of proving any such abetment. On the other hand, if the theft be true, and the allegation about the Mohunt be false, then Grish deserves to be punished for wanton defamation." It has been urged that the order made by the Deputy Magistrate has been suggested by the order of the Magistrate, and is intended to be in compliance with it. With regard to the first view, we think it clear that this order does not mean to give Grish Chunder sanction to prosecute. It does not purport to do so; and unless it did, it is difficult to see how it amounts to a sanction to prosecute. It only really submits

the case to the District Magistrate to be dealt with under s. 211, if he thinks proper to do so, and the remark,—"All these persons may be tried under any other section of the Penal Code that may be found applicable,"—really means that, if a prosecution is instituted under s. 211, and it turns out that there are other sections under which these persons can be tried, they may be so tried. That does not assist us in construing the order. It does not show that sanction was given to Grish Chunder to prosecute. Whether this order may be construed in either of the two other ways that I have pointed out, is, we think, immaterial. In either case, we think it is an order that we can deal with, and we think that we can also deal with the order that has resulted from it, *viz.*, the issue of warrants. The practical effect of either of these two constructions is the same. If we have power to interfere with an order under s. 476, we have equally power to interfere with a matter of this kind in which the Deputy Magistrate, having tried the case, makes an order sending the record with an invitation to the District Magistrate to prosecute. If this amounts to simply sending the case to the District Magistrate to deal with it under s. 211 of the Penal Code, then it is not a sanction to prosecute. If it is an order under s. 476 of the Criminal Procedure Code, then the considerations arise to which we will presently refer, *viz.*, whether there was any necessity for a preliminary inquiry, and whether the absence of such preliminary inquiry has vitiated the inquiry purporting to be made under that section. We have ample jurisdiction to interfere on a question of this kind. In the first place we have the terms of the Criminal Procedure Code, which clearly show that we have such jurisdiction. Under s. 439, the High Court, in exercising its powers of revision, has the powers conferred on a Court of Appeal by s. 423 to alter or reverse an order of the lower Court. So that we have the same power to alter or reverse an order of this description as an Appellate Court would have in a case of appeal. This construction, we think, is confirmed by the cases cited in which different benches of this Court have interfered with orders made under this section, or under the corresponding section in the earlier Act. The cases to which we have been referred are first

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the case of *Queen* v. *Baijoo Lall*, (1) decided by Macpherson and Morris, JJ., and there is an earlier case, namely *In the matter of the petition of Kali Prosunno Bagchee* (2).

There being jurisdiction, and the order being in the way described, the question arises whether this is a case in which we ought to interfere. We think that the Magistrate ought not to have made this order, and that there is no ground for his order. There is no doubt that before proceedings under s. 476 can be instituted, either there must be a preliminary inquiry held by the Magistrate, and in such inquiry there must be direct evidence fixing the offence upon the persons whom it is sought to charge, or in the earlier proceedings out of which this enquiry arises, there must be direct evidence charging these persons with an offence. It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that these persons had been guilty of an offence. The law as laid down in the cases clearly shows, that before a Magistrate can proceed at all under that section, he must either in the case before him or in the inquiry which he must make have distinct evidence on the commission of an offence. If the order is to be construed in accordance with the third view we have mentioned, we equally think that it could only be made upon the footing that there was before the Magistrate direct and substantial evidence of the commission of an offence.

The learned Judges then proceeded to consider the evidence in all the rules, and concluded as follows:—

It is clear to us that on the evidence in this case, the Magistrate was not justified in taking steps beyond the acquittal of Grish Chunder.

That being so we must set aside the order made by him of the 7th May 1889, beginning with the words,—"The records of the case will be submitted * * * * *"——down to the end.

And further we direct that the order made by Mr. Ainslie and the warrants issued by him be quashed.

Rules made absolute.

H. T. H.

(1) I. L. R., 1 Calc., 450. (2) 23 W. R., Cr., 39.